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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,860	03/10/2004	Michael Wefers	01899-P0020D GSW/TMO/DJV	3716
24126	7590	11/29/2005	EXAMINER	
ST. ONGE STEWARD JOHNSTON & REENS, LLC 986 BEDFORD STREET STAMFORD, CT 06905-5619			KUHNS, SARAH LOUISE	
			ART UNIT	PAPER NUMBER

1761

DATE MAILED: 11/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/797,860

Applicant(s)

WEFERS, MICHAEL

Examiner

Sarah L. Kuhns

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 13-29 is/are pending in the application.
- 4a) Of the above claim(s) 24-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 13-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Koshida et al., U.S. Patent 4,341,803, for the reasons set forth in the previous Office Action.

Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Durance, U.S. Patent 6,312,745. Durance discloses a dried food product that is treated in the manner claimed (see discussion below). It is not seen how the dried food product of Applicant differs from that of the prior art.

Claim Rejections - 35 USC § 103

Claims 9, 10, 13-16 and 18-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Durance.

In regard to claims 9 and 10, Durance discloses a method to produce a food product that is dried comprising the steps of freezing the food product (column 7, lines 54-58); thawing and pre-drying with hot conditioned air; drying the food product with hot air; and heat treating by microwave treatment in a vacuum said food product so that a cellular break-up and puffing of the food product occurs for obtaining hydratable food product being finally dried and hygienic (see Figure 1 and Examples 1-3). Durance

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does not explicitly disclose a preparation step, but it would have been expected that the fruit were washed and/or debris was removed prior to processing since such steps are notoriously well known in the art.

In regard to claims 13 and 14, it would have been expected that the berries of Durance were selected and packed following treatment since it was conventional to sell berries in packages and also to check berries for quality prior to packing.

In regard to claims 15 and 16, Durance discloses the heat treating being performed at a reduced atmospheric pressure of 40 mmHg, which is 53.3 mbar (column 8, line 32).

In regard to claims 18 and 19, Durance discloses the food product being berries (abstract).

In regard to claims 20-23, Durance discloses the food product optionally being frozen and also being pretreated by infusion with sugars by immersion in a solution of sugars (column 7, lines 54-58). Additionally, it was notoriously well known to freeze berries for transportation and/or storage purposes.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Durance, as applied above, in view of Webb, U.S. Patent 2,283,302. Durance does not disclose milling the food product. However, it is well known that dehydrated fruits can be broken into particles of any desired size to produce granulated fruit and powdered fruit as evidenced by Webb (column 6, line 42). It would therefore be obvious to break the dehydrated fruit of Durance into powdered/granulated fruit in order to provide a product that is useful in baking.

Response to Arguments

The affidavit under 37 CFR 1.132 filed October 19, 2005 and the corresponding arguments are insufficient to overcome the rejection of claims 1-9 over Koshida as set forth in the last Office action because: To be of probative value, any objective evidence should be supported by actual proof. Objective evidence which must be factually supported by an appropriate affidavit or declaration to be of probative value includes evidence of unexpected results, commercial success, solution of a long-felt need, inoperability of the prior art, invention before the date of the reference, and allegations that the author(s) of the prior art derived the disclosed subject matter from the applicant. See, for example, *In re De Blauwe*, 736 F.2d 699, 705, 222 USPQ 191, 196 (Fed. Cir. 1984) ("It is well settled that unexpected results must be established by factual evidence." "[A]ppellants have not presented any experimental data showing that prior heat-shrinkable articles split. Due to the absence of tests comparing appellant's heat shrinkable articles with those of the closest prior art, we conclude that appellant's assertions of unexpected results constitute mere argument."). See also *In re Lindner*, 457 F.2d 506, 508, 173 USPQ 356, 358 (CCPA 1972); *Ex parte George*, 21 USPQ2d 1058 (Bd. Pat. App. & Inter. 1991). Applicant has not submitted any quantitative evidence demonstrating the difference between the claimed product and that of the prior art.

Applicant's arguments with respect to the rejection of claims 1-23 over the combination of Loh and Durance are moot in view of the new grounds of rejection above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah L. Kuhns whose telephone number is 571-272-1088. The examiner can normally be reached on Monday - Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached at 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SLK


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